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14 November 2006

**Ex Parte**

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage LEC Study Area,* WC Docket No. 05-281.

Dear Ms. Dortch:

General Communication, Inc. ("GCI") submits this letter and the attached declarations to further explain that GCI's own full-facilities-based network "covers" only **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]**of the locations in the small business and enterprise markets (*i.e.*, medium and large) in Anchorage (as well as **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** of residential locations in certain wire centers). As the Commission made clear in the *Omaha Forbearance Order*, GCI "covers" a location only where it is "willing *and able*, within a commercially reasonable time, to offer the *full range of services* that are substitutes for the incumbent LEC's local service offerings."[1] As GCI's steady upgrade and rollout of its own plant and facilities demonstrates, it is more than willing to provide service to every customer in Anchorage over its own facilities. Unfortunately, it is not yet able to do so, especially for **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** of locations in the small business and enterprise markets. As the Commission recognized in its *Omaha Forbearance Order*, an unbundled network element ("UNE") forbearance request cannot meet Section 10(a)'s requirements

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[1] *Petition of Qwest Corporation from Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area,* Memorandum Opinion and Order, 20 FCC Rcd 19415, 19444 (¶ 60 n.156) (2005) (emphasis added) ("*Omaha Forbearance Order*").

where the ILEC's competitors do not cover enough residential or business locations to prevent the exercise of market power in each of the relevant geographic and product markets.[2]

In order for GCI to "cover" a particular location, the following prerequisites must be satisfied:

- GCI must have facilities that "pass" the particular location, *i.e.*, GCI's telephony cable or fiber plant must be in rights-of-way adjacent to a particular location.
- GCI must have drops in place, or capable of being easily and rapidly installed, into the particular customer location.
- Technology must be available that is both economically feasible to install and capable of delivering the full range of services that the customer demands that are substitutes for the ILEC's services.

Unless these prerequisites are met, GCI will not be "able, within a commercially reasonable time, to offer the full range of services that are substitutes for the incumbent LEC's local service offerings," as required by the *Omaha* decision.

As a practical matter, in the small business and enterprise markets, this means that GCI will only be able to serve (*i.e.*, cover) only a **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** of the enterprise and small business customers within a given wire center, even when it "passes" a much larger number. As explained further below, GCI's experience with its current DLPS rollout shows that, one to two years after it completes a node upgrade, it generally can use cable telephony to serve only approximately **[BEGIN CONFIDENTIAL]END CONFIDENTIAL]** of its DS0 business lines within that node (and **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** of the DS1 lines). The remainder cannot be served within a commercially reasonable period of time due to operational and technical limitations. Thus, if GCI facilities "pass" approximately **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** of the small business locations in a given wire center, those facilities will only "cover" approximately **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** of the small business locations in that wire center. With respect to service from GCI's fiber facilities, the situation is similar: GCI has demonstrated that it is generally not economically feasible to serve fewer than **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** DS1s using fiber (which excludes **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** small business and **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** of GCI's enterprise customer locations citywide),[3] and in any event, in no wire center do

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[2] *See generally id.* at 19445–53 (¶¶ 61–72).

[3] *See* Declaration of William P. Zarakas ("Zarakas Decl."), Exhibit IX, attached as Exhibit C to *Opposition of General Communication, Inc. to the Petition for Forbearance from Sections 251(c)(3) and 252(d)(1) of the Communications Act Filed*

GCI's fiber facilities actually pass more than **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** of small business locations (the **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** Wire Center)[4] and **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** of enterprise locations (the **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** Wire Center). No matter how you look at it, GCI facilities only "cover" a **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** of locations in each of the small business and enterprise product markets.

Even in the residential market, it is clear that operational and technical obstacles continue to prevent GCI from being "able, within a commercially reasonable time, to offer the full range of services that are substitutes for the incumbent LEC's local service offerings" to all residential locations that GCI "passes." GCI's experience has shown that after one to two years, GCI can only serve approximately **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** of the residential lines within an upgraded node area. Thus, for a wire center in which GCI "passes" **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** of the homes, it can only realistically expect to "cover" **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** of the homes after a one-to-two year transition period.

**GCI Coverage in Small Business Markets**

GCI has provided in the record estimates of the number of small business locations (defined as businesses of fewer than eight lines) that it expects to "pass" by the end of 2006. In a study conducted by Alan Mitchell, GCI estimated the percentage of small business land parcels that are located within 80 feet of GCI's fiber and telephony upgraded cable plant. This approach captures all locations on either side of all but the widest streets and highways, and excludes those customers that cannot be reached without traversing another property owner's property (which cannot be done without securing private rights of way).[5] That study shows that GCI expects to pass the following percentage of small business locations in each wire center with its cable and/or fiber plant by the end of 2006.

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*by ACS of Anchorage,* WC Docket No. 05-281 (filed Jan. 9, 2006) ("GCI Opposition"), and *infra*, at 4.

4 This excludes the O'Malley wire center, which has only **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** small business locations, **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** of which are passed by GCI fiber.

5 Reply Declaration of Alan Mitchell ("Mitchell Reply Decl.") ¶¶ 2, 4–6, attached hereto as Exhibit 1; Declaration of Alan Mitchell ("Mitchell Initial Decl."), attached as Exhibit D to *July 3rd Ex Parte Notice of General Communication, Inc.*, WC Docket No. 05-281 (filed July 3, 2006) ("GCI July 3rd Ex Parte").

| Wirecenter[6] | Total Locations | % of Small Business Locations Passed By: Telephony-Upgraded Cable Plant - Projected End of 2006 | % of Small Business Locations Passed By: GCI Fiber Network | % of Small Business Locations Passed By: GCI Fiber or Telephony-Upgraded Cable Network - Projected End of 2006 |
|---|---|---|---|---|
| North | | | | |
| Central | | | | |
| East | | | | |
| West | | | | |
| South | | | | |
| O'Malley | | | | |
| Rabbit Creek | | | | |
| Indian | | | | |
| Girdwood | | | | |

GCI cannot use its plant, and particularly its fiber plant, to economically provide service to every passed location. William Zarakas evaluated the economic feasibility of providing service to businesses using both GCI's cable and fiber networks. Mr. Zarakas found that "GCI can economically upgrade its cable plant network to deploy DLPS to its small business customers, *provided that cable facilities run past the specific business location being considered.*"[7] However, Mr. Zarakas also noted that if GCI had to extend service into areas that serve few residential customers, the average cost per line would increase.[8] This calls into question the economic feasibility of *extending* cable plant into business-only areas. Furthermore, Mr. Zarakas also found that it would be generally uneconomic to serve customers of less than **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** DS1s of demand over GCI's own fiber facilities, except where those customers are already on GCI fiber facilities.[9] This confirms GCI's own experience that fiber facilities are not an economically feasible alternative for serving small business

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6 Mr. Mitchell's study did not include the Hope, Ft. Richardson, or Elmendorf AFB areas, as parcel data for these areas is not available. Mitchell Initial Decl. ¶ 7 n.9. **[BEGIN CONFIDENTIAL]**

**[END CONFIDENTIAL]** Hope lies outside of GCI's cable franchise area and hence outside of its potential cable telephony upgrade footprint.

7 Zarakas Decl. ¶ 35 (emphasis added).

8 *Id.* ¶ 37.

9 *Id.* Exh. IX.

customers.[10] Thus, in evaluating the number of small business locations "covered" by GCI facilities, the record supports first examining only the number of locations "passed" by GCI's telephony-capable cable facilities.[11]

Simply because GCI has upgraded cable telephony plant in the street adjacent to a small business location does not, however, mean that GCI is "able, within a commercially reasonable time, to offer the full range of services that are substitutes for the incumbent LEC's local service offerings." The attached Declaration of Jonathan Wolf explains many reasons underpinning GCI's inability to provide service over its own loops facilities to a large number of small businesses customers that order DS0 service in Anchorage, even when such small business customers are "passed" by GCI telephony capable cable facilities.

First, even where GCI's cable plant passes a small business location, the plant often does not enter the building. Indeed, based on GCI internal surveys, Mr. Wolf estimates that GCI has conduit or drop access to about only **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** of the buildings that its facilities pass, and thus cannot provide DLPS until it installs drop plant into the customer's building.[12] For small business customers, GCI typically must install drops underground to avoid laying cable over high-traffic areas such as sidewalks and parking lots.[13] This, in turn, requires permits and permission. Furthermore, Anchorage's shortened construction season hampers the speed with which GCI can undertake underground work, as GCI cannot gain access to work in municipal rights of way (or even block a portion of the street) from approximately October 15 to May 15.[14] All of this substantially limits GCI's ability to offer small business customers the full range of ILEC services within a commercially reasonable period of time.

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[10] Declaration of Blaine Brown ("Brown Decl.") ¶¶ 10–19, attached as Exhibit J to GCI Opposition

[11] In any event, including the number of locations passed by GCI's fiber network but not by its cable network does not materially increase the percentage of locations that GCI passes. *See* Mitchell Reply Decl. ¶ 13 (showing, with the exception of the **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** Wire Center, that percentage of small business locations passed by cable and fiber combined is only **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** percentage points higher than the percentage of small business locations passed by cable alone).

[12] Declaration of Jonathan P. Wolf ("Wolf Decl.") ¶ 9, attached hereto as Exhibit 2.

[13] *Id.* ¶ 7. Although GCI attempts to use aerial drops where it can do so, zoning regulation and Anchorage municipal government preferences and requirements usually preclude use of aerial drops. *Id.* ¶ 7 n.6.

[14] *Id.* ¶ 7 n.6.

Second, even assuming its cable facilities enter a building with small business customers, GCI's DLPS is currently incompatible with a number of common small business applications and technologies, including multiline or directory number hunt capability, ground start or wink start trunk PBX/key systems, and many alarm systems.[15] **[BEGIN CONFIDENTIAL]**

**[END CONFIDENTIAL]** While GCI is working to address these problems, until they are solved, GCI simply cannot offer the "full range of services" to a majority of Anchorage small business customers over its own facilities in a "commercially reasonable time."[20]

GCI's actual experience converting business customers to DLPS-based DS0 reliably indicates the number of small business locations that GCI cannot serve even after it has upgraded a node for cable telephony and thus "passes" the small business customers within that node. Notably, once GCI upgrades a node for cable telephony, it has a strong incentive to provision as many customers as possible over that node in an effort to recover, and maximize the return on, its investment. Once GCI upgrades a node, it evaluates which customers (including ACS customers) it can convert to DLPS. As noted above, GCI's experience is that it currently can serve only, on average, **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** of its business customers' DS0 lines within one to

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15 *Id.* ¶¶ 8–9, 11.

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20 **[BEGIN CONFIDENTIAL]**

**[END CONFIDENTIAL]** Given the potential for this inconvenience, it is difficult to persuade the customer to convert to GCI's DLPS to receive a service that it already receives over UNE loops.

two years of upgrading a particular node.[21] Thus, GCI can only expect to cover approximately **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** of the small business customers passed by its telephony capable cable facilities.

Applying even the high end of this range to the percentage of small businesses passed by GCI cable facilities (and assuming that GCI completes all anticipated 2006 cable telephony upgrades) shows GCI will only "cover" a **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** of small business locations in any given wirecenter by the end of 2006. And even this estimate does not include the time necessary to transition those small businesses that are "covered" onto GCI's DLPS facilities.

| Wirecenter[22] | Total Locations | % of Small Business Locations Passed by Telephony-Upgraded Cable Plant - Projected End of 2006 | % of Passed Locations Expected to Be Served | % of Covered Small Business Locations Based on End of 2006 Upgrades (Excluding Transition Time) |
|---|---|---|---|---|
| North | | | | |
| Central | | | | |
| East | | | | |
| West | | | | |
| South | | | | |
| O'Malley | | | | |
| Rabbit Creek | | | | |
| Indian | | | | |
| Girdwood | | | | |

In the remainder of the small business locations, GCI will not be "able, within a commercially reasonable time, to offer the full range of services that are substitutes for the incumbent LEC's local service offerings." Because GCI covers such a small percentage of small business locations in each wirecenter, access to cost-based UNEs pursuant to Sections 251(c)(3) and 252(d)(2) remains necessary in these wire centers to ensure that rates are just, reasonable and nondiscriminatory, and to protect small business consumers and the public interest. This conclusion is especially true because the record demonstrates that ACS can and does engage in customer specific pricing in the business markets,[23] and thus, in the absence of GCI competition using UNEs, ACS could charge

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21 *Id.* ¶ 5.

22 *See supra* n.6.

23 *See, e.g.*, Statement of Mark Enzenberger ("Enzenberger Statement") ¶¶ 2–3, attached as Exhibit G to *Petition of ACS of Anchorage, Inc. for Forbearance from Certain Dominant Carrier Regulation of its Interstate Access Services, and for Forbearance from Title II Regulation of its Broadband Services, in Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area,* WC Docket No. 06-109 (filed May 22, 2006)

higher prices – reflecting ACS's market power – to those businesses that GCI cannot cover using its own facilities.[24]

**GCI Coverage in Enterprise Markets**

As with small business locations, GCI has provided in the record estimates of the number of medium/large (enterprise) business locations (defined as businesses of eight or more lines) that it expects to "pass" by the end of 2006. In the study conducted by Mr. Mitchell, GCI estimated the percentage of medium/large business land parcels that will be passed by (*e.g.*, located within 80 feet of) GCI's fiber and telephony upgraded cable plant at the end of 2006.[25] GCI performed this analysis for each Anchorage wire center, with the following results:

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("ACS Petition II"); Statement of Mitchell Andrew Coon ("Coon Statement"), attached as Exhibit F to ACS Petition II; Declaration of Gina Borland. ¶ 4, attached as Exhibit A to GCI Opposition; Declaration of G. Nanette Thompson attached as Exhibit B to GCI July 3rd Ex Parte ¶¶ 11–12.

[24] *See* Declaration of David M. Sappington in Response to ACS's Ex Parte Submission Filed September 8, 2006, attached hereto as Exhibit 3.

[25] Mitchell Reply Decl. at Exhibit 3.

| | | % of Enterprise Business Locations Passed By | | |
|---|---|---|---|---|
| Wirecenter[26] | Total Locations | Telephony-Upgraded Cable Plant - Projected End of 2006 | GCI Fiber Network | GCI Fiber or Telephony-Upgraded Cable Network - Projected End of 2006 |
| North | | | | |
| Central | | | | |
| East | | | | |
| West | | | | |
| South | | | | |
| O'Malley | | | | |
| Rabbit Creek | | | | |
| Indian | | | | |
| Girdwood | | | | |

Again, however, simply because GCI cable or fiber plant passes a particular enterprise business location does not mean that GCI can actually use that plant to serve a customer at that location within a commercially reasonable period of time (or at all). As GCI has detailed previously, existing cable telephony technology does not yet permit GCI to provide reliable or economical large-scale DS1 level services to medium/large business customers.[27] Further, cable plant is incompatible with various timing/clocking requirements and PBX systems that are vital for many enterprise customers. This past summer, CableLabs – the internationally recognized standards body for the cable industry – issued two specifications that GCI hopes will result in industry standard solutions to some of these technical impediments.[28] But, even if GCI finds such CableLabs-certified

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[26] Mr. Mitchell's study did not include the Hope, Ft. Richardson, or Elmendorf AFB areas, as parcel data for these areas is not available. Mitchell Initial Decl. ¶ 7 n.9. **[BEGIN CONFIDENTIAL]**

**[END CONFIDENTIAL]** Hope lies outside of GCI's cable franchise area and hence outside of its potential cable telephony upgrade footprint. In any event, GCI provides **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** Exhibit VIIA, attached to *November 7th Ex Parte Notice Filed by General Communication, Inc.*, WC Docket No. 05-281 (filed Nov. 7, 2006) (updating original Zarakas data).

[27] *See, e.g.*, Declaration of Richard Dowling ("Dowling Decl."), attached as Exhibit G to GCI Opposition; Declaration of Dennis Hardman ("Hardman Decl."), attached as Exhibit G to GCI July 3rd Ex Parte; Brown Decl. ¶¶ 10–19.

[28] *See* CableLabs, *Data-Over-Cable Service Interface Specifications, Business Services over DOCSIS, TDM Emulation Interface Specification* (issued May 12, 2006)

products to be adequate, full commercial deployment is likely at least two years away, and thus does not allow GCI to provide DS1 services in anything resembling a "commercially reasonable time."[29]

Moreover, even when DOCSIS standard compatible DS1 equipment is available, in order to serve as an adequate substitute for providing DS1 service over UNE loops, GCI must be able to gain access to conduit entering commercial buildings. GCI has detailed the obstacles to such access previously in this proceeding.[30]

In addition to these technical and operational impediments to providing such services with any measure of quality over cable plant, GCI is faced with other operational and customer relations difficulties as well.[31] Traditional DS1 lines over copper wire simply provide data transport that the customer can use as it sees fit.[32] By contrast, and while DS1 services over HFC will eventually provide numerous advantages over traditional DS1, duplicating this transparency for business customers that operate their own master clocking systems – especially between multiple office locations – currently requires coordination with the customer to account for clock synchronization requirements.[33] Having GCI involved in clocking can limit the customer's flexibility to later change equipment or uses for its DS1 services.[34] Moreover, customers can be reluctant to reveal their specific applications.

Possibly the single largest impediment to GCI's ability to use its own cable facilities as a substitute for the full range of DS1 services – were a technological solution commercially available today – is the large amount of cable bandwidth DS1 over HFC requires. GCI does not have sufficient upstream capacity to offer these services on a wide-scale basis today.[35] In order to provide all of its business customers with DS1 services over its HFC plant, GCI will have to undertake a large-scale upgrade of its

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(*available at:* http://www.cablemodem.com/downloads/specs/CM-SP-TEI-I01-060512.pdf). *See also* CableLabs, *Analog Trunking for PBX Specification* (issued April 19, 2006) (*available at:* http://www.packetcable.com/downloads/specs/PKT-SP-ATPBX1.5-I01-060419.pdf); Hardman Decl., ¶¶ 3–4.

29 *See* Dowling Decl. ¶ 6 (discussing timeline of deployment for CableLabs-certified network-powered eMTAs).

30 *See* Brown Decl. ¶¶ 10–19.

31 Hardman Decl. ¶ 6.

32 *Id.*

33 *Id.*

34 *Id.*

35 *Id.* ¶ 7.

network capacity.[36] Specifically, GCI will have to install hundreds of additional amplifiers and upgrade thousands of taps to boost bandwidth capacity.[37] Such an upgrade will take significant amounts of time and money.[38] And, of course, GCI's ability to provide DS1 over HFC will depend on the accessibility of conduit entering commercial buildings. GCI has detailed the obstacles to such access previously in this proceeding.[39]

Many of these are problems that the entire cable industry faces. The technology to provide the full range of DS1 services over an HFC network is just leaving the gate and certainly cannot provide an immediate and comprehensive alternative to UNE loops for high-capacity business services. Indeed, according to one leading communications trade publication, "[c]able operators generally avoid the large-business, or 'enterprise,' market. Those customers – from regional banks to giant corporations – have complicated demands and locations in multiple cities."[40] National MSOs much larger and with many more resources than GCI have not yet begun providing such service. According to a prominent investment bank, "Comcast is still in the early stages of starting up its commercial telecom business. . . . It's going to take some time to develop business plans, establish operations (e.g., product development, customer support, field operations, and sales), and to then ramp up the business through out [sic] Comcast's footprint."[41] Indeed, industry executives have stated that service to businesses "will be 'the *next* growth engine" in *5-plus years*."[42] In short, these emerging technologies are neither standard nor widely adopted and do not adequately substitute for the full range of services required to meet the demanding needs of those enterprise customers GCI now serves over UNE loops. Thus, in evaluating the number of potential enterprise customers covered by GCI, the Commission should include only those customers passed by GCI's fiber network.

With respect to enterprise business customers that are passed by GCI's fiber network, GCI is not "able, within a commercially reasonable time, to offer the full range of services that are substitutes for the incumbent LEC's local service offerings" to all of these customer locations. In the first instance, GCI does not have drops into every building location or even a majority. GCI's ability to construct such drops is limited by the same factors that limit its ability to construct DS0 drops: timely access to rights of way and conduits.[43] As with DS0 drops, fiber drops must generally be placed

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[36] *Id.*

[37] *Id.*

[38] *Id.*

[39] *See* Brown Decl. ¶¶ 11–19.

[40] John M. Higgins, *Cable's Next Big Thing,* Broadcasting & Cable, Oct. 9, 2006, at 18.

[41] Credit Suisse, *More Upside in Comcast: Comcast Report,* at 8 (issued Sept. 22, 2006)

[42] *Comcast May Eventually Provide Phone, Broadband, and Video Services Wirelessly,* Communications Daily, Sept. 21, 2006, at 11 (quoting Comcast COO Steve Burke).

[43] *See* Wolf Decl. ¶ 7.

underground, and their placement is therefore limited by the short Anchorage construction season and the municipality's refusal to issue permits to occupy the public right of way (including blocking any portion of the street) from approximately October 15 to May 15.[44] This moratorium even prevents access to existing conduit through a manhole located in the street during the months when permits are unavailable.[45]

Furthermore, Mr. Zarakas's analysis showed that it would only be economically feasible for GCI to serve approximately **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** of its current enterprise customer locations from GCI's own fiber facilities.[46] It is especially infeasible to serve any enterprise customer locations with less than **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** DS1s of demand; Mr. Zarakas found that it would not be economically feasible to serve at least **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** of such smaller enterprise customer locations.[47]

Applying this percentage of enterprise customer locations that it would be economically feasible for GCI to serve to the percentage of enterprise customer locations passed by GCI fiber facilities shows that GCI potentially covers only a **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** of the enterprise customer locations in each wire center.

| Wirecenter[48] | Total Locations | % of Enterprise Business Locations Passed by GCI Fiber Plant | % of Passed Locations that Are Expected to be Economically Feasible to Serve | % of Covered Enterprise Business Locations (Excluding Transition Time) |
|---|---|---|---|---|
| North | | | | |
| Central | | | | |
| East | | | | |
| West | | | | |
| South | | | | |
| O'Malley | | | | |
| Rabbit Creek | | | | |
| Indian | | | | |
| Girdwood | | | | |

44 *Id.* ¶ 7 & n.6

45 *Id.*

46 *See* Zarakas Exhibit IX (showing that it is economically feasible to serve **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** off-net locations, in addition to **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** GCI existing on-net locations, which is **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** of total locations).

47 *See id.*

48 *See supra* n.25.

Notably, even these projections likely overstate the number of covered locations. At present, GCI only serves approximately **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** of its enterprise customers over GCI's own fiber facilities.[49] This suggests that building access and other operational impediments may actually preclude GCI from serving over its own facilities even all of the enterprise customers that could be economically feasible to serve using GCI's fiber network.

As in the small business markets, because GCI covers (at most) **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** enterprise business locations in each wirecenter, access to cost-based UNEs pursuant to Sections 251(c)(3) and 252(d)(2) remains necessary in all wire centers to ensure that rates to enterprise customers are just, reasonable and nondiscriminatory, and to protect enterprise business consumers and the public interest. As in the small business market, this conclusion is especially true because the record demonstrates that ACS can and does engage in customer specific pricing in the business markets, which, in the absence of GCI competition using UNEs, would allow ACS to charge higher prices – reflecting ACS's market power – to those enterprise businesses that GCI cannot cover using its own facilities.

**GCI Coverage in Residential Markets**

As with small and enterprise business locations, GCI has provided in the record estimates of the number of residential locations that it expects to "pass" by the end of 2006. In the study conducted by Mr. Mitchell, GCI estimated the percentage of residential parcels that are currently passed by (*e.g.*, located within 80 feet of) GCI's fiber and telephony upgraded cable plant[50] and that will be passed at the end of 2006.[51] GCI performed this analysis for each Anchorage wire center, with the following results:

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49 *See* Zarakas Exhibit IX.

50 Mitchell Reply Decl. ¶ 6.

51 Mitchell Initial Decl. at Exhibit 1 (showing homes passed by telephony capable cable plant as of approximately July 3, 2006, which was the same as at the end of the 2005 construction season because GCI had not yet completed any new node upgrades in 2006); Mitchell Reply Decl. at Exhibit 1.

| | | % of Residential Locations Passed By | |
|---|---|---|---|
| Wirecenter[52] | Total Locations | Telephony-Upgraded Cable Plant - End of 2005 Construction Season | Telephony-Upgraded Cable Plant - Projected End of 2006 |
| North | | | |
| Central | | | |
| East | | | |
| West | | | |
| South | | | |
| O'Malley | | | |
| Rabbit Creek | | | |
| Indian | | | |
| Girdwood | | | |

Once again, however, simply because GCI "passes" a certain residential customer location does not mean that GCI can serve that location. In the first instance, converting customers onto GCI's cable telephony facilities takes time and requires customer cooperation.[53] As GCI has detailed, it must undertake a substantial effort to contact customers, arrange for a home visit to install cable telephony equipment, test and sometimes install new drops, and ensure that the customer is disconnected from the ACS loop.[54] GCI's experience has been that it takes approximately a year after upgrading a node to cable telephony to convert approximately **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** of its residential customers served by that node to cable telephony.[55] By contrast, three months after a node conversion, GCI is only able to convert about **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** of its residential customers within that node.[56]

Furthermore, GCI's experience in the residential market demonstrates that there are some customers that GCI passes that GCI is not able "within a commercially reasonable time, to offer the full range of services that are substitutes for the incumbent LEC's local service offerings." Even two years after completing a node upgrade, GCI's

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52 *See supra* n.6.

53 This is true in the business markets as well when GCI is able to serve a particular business customer using cable telephony.

54 *See, e.g.*, Declaration of Kevin Sheridan ¶¶ 5–10, attached as Exhibit A to GCI July 3rd Ex Parte.

55 Wolf Decl at ¶ 3.

56 *Id.*

experience is that it has only been able to convert, on average, **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** of its residential customers within that upgraded node to cable telephony.[57] The remaining customers may have a variety of impediments to use of cable telephony. As discussed above, many alarm systems are not compatible with cable telephony.[58] Some customers require substantial inside wire work. And some customers are simply extremely difficult to contact and schedule when they do not have an incentive to change their service.

Applying even the higher two-year percentage of residential homes converted to the number of homes passed by GCI at the end of the 2005 construction season and at the end of 2006 shows that GCI facilities, as of the end of this year, will only cover more than a majority of residential customers in a single wire center. By the end of 2007, GCI expects to be able to cover a majority of residential locations in five wire centers.[59]

| | | % of Residential Locations Passed By | | | % of Residential Locations Covered By | |
|---|---|---|---|---|---|---|
| Wirecenter[60] | Total Locations | Telephony-Upgraded Cable Plant - End of 2005 Construction Season | Telephony-Upgraded Cable Plant - Projected End of 2006 | % of Residences Able to be Served Within Two Years | Telephony-Upgraded Cable Plant - End of 2005 Construction Season (customers transitioned as of end of 2006) | Telephony-Upgraded Cable Plant - Projected End of 2006 (customers transitioned as of end of 2007) |
| North | | | | | | |
| Central | | | | | | |
| East | | | | | | |
| West | | | | | | |
| South | | | | | | |
| O'Malley | | | | | | |
| Rabbit Creek | | | | | | |
| Indian | | | | | | |
| Girdwood | | | | | | |

[57] *Id.*

[58] *See id.* ¶ 11.

[59] GCI currently anticipates completing the remainder of its cable node upgrades – *i.e.*, upgrades for nodes other than those completed as of the end of 2006 – by the end of the 2008 construction season.

[60] *See supra* n.6.

* * *

In sum, GCI cannot "cover" the vast majority of the small or enterprise business customers in any wire center in Anchorage. Even where GCI's plant passes business locations, it cannot provide the full range of services to many businesses, including small business customers, within a commercially reasonable time. Moreover, in the residential market, even after GCI completes upgrading for telephony the cable nodes serving a substantial majority of residential customers in any wire center, a one to two year transition is required before GCI is actually able, within a commercially reasonable period of time, to serve a substantial majority of its customers in that wire center over its own facilities by offering services that substitute for the full range of ILEC services.

Sincerely yours,

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